UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5

COASTAL INTERNATIONAL
SECURITY, INC.[1]
Employer

and Case 5-RC-15794

NATIONAL ASSOCIATION OF
SPECIAL POLICE AND SECURITY
OFFICERS (NASPSO)
Petitioner

COASTAL INTERNATIONAL
SECURITY, INC.
Employer

and Case 5-RC-15799

SECURITY POLICE AND FIRE
PROFESSIONALS OF AMERICA (SPFPA)
Petitioner

DECISION AND DIRECTION OF ELECTION

ISSUE

The sole issue in this proceeding is whether the Employer's voluntary recognition of SPFPA bars the petitions filed by NASPSO and SPFPA.[2]

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[1] The name of the Employer appears as amended at the hearing.

[2] Both Petitioners seek to represent the Employer's employees as described in the following unit, which all parties stipulated to be the appropriate unit: :

> All full-time and regular part-time security officers employed by the Employer at the United States Department of Commerce building located at 1401 Constitution Avenue, NW, Washington DC; but excluding all security officers at other locations, corporate officers, directors, lieutenants, sergeants, project managers, non-guard employees, office clerical employees, professional employees, managerial employees, and supervisors as defined by the Act.

There are approximately 50 employees in the stipulated unit. It should also be noted that the parties regularly refer to the physical location of facility where the unit is employed as the Hoover building. As such, and in the interest of brevity, I will use that designation throughout this decision.

NASPSO'S POSITION

NASPSO contends that the evidence fails to support a finding that the Employer's recognition of SPFPA warrants bar status. In support of its position, NASPSO relies on the following factors: (1) NASPSO's current executive director worked for SPFPA through May 2004, where he was responsible for negotiating and signing collective-bargaining agreements on behalf of SPFPA at facilities throughout the Washington, DC area, and during that time, he was unaware that the Employer voluntarily recognized SPFPA or even contemplated such a decision; and, (2) at the time NASPSO made its demand for recognition in August 2004, the Employer never mentioned that it had recognized SPFPA as the representative of the Unit.

At the hearing, NASPSO called as its witness Caleb A. Ray Burriss, NASPSO executive director.

SPFPA AND EMPLOYER'S POSITIONS

SPFPA and the Employer contend that the petitions should be barred as SPFPA possessed authorization cards from a majority of bargaining unit members as of March 2004, and thereafter the Employer voluntarily recognized SPFPA.[3] In support of that position, SPFPA and the Employer relied on the following factors: (1) in March 2004, as part of its campaign to organize security officers at various Department of Commerce facilities, SPFPA collected a majority showing of authorization cards for the unit at the Hoover building; (2) thereafter, the Employer recognized SPFPA as clearly evidenced in a July 22, 2004 letter from the Employer to SPFPA concerning the parties' agreement to enter into negotiations for a collective-bargaining agreement and to set a ratification deadline of December 15, 2004;[4] and, (3) proof of that recognition is further evidenced by the fact that representatives from SPFPA and the Employer negotiated, agreed to terms, and actually signed a collective-bargaining agreement on November 4, 2004.[5]

At the hearing, the Employer called as its witnesses Susan Kerr O'Donnell, Employer Chief of Staff, and George Louis Colon, Employer Project Manager at the Hoover Building.

CONCLUSION

For the reasons that follow in this decision, and after careful consideration of the totality of the record evidence and the factual and legal positions set forth in post-hearing

[3] SPFPA asserted that it filed the petition in Case 5-RC-15799 merely to protect itself against a possible finding that there is no recognition bar.

[4] SPFPA and the Employer contemplated that any agreement would encompass the Department of Commerce's employees employed at the sites covered by the certification in Case 5-RC-15659 as well as the unit at the Hoover building.

[5] Although SPFPA and Employer signed the agreement, SPFPA posits, and all parties stipulated, that the agreement has not yet been ratified by the membership and, therefore, the agreement itself is not a bar to the processing of the petitions.

briefs, I find that SPFPA and the Employer failed to establish that the Employer voluntarily recognized SPFPA upon a demonstrated showing of majority support from the unit employees.

FACTUAL SETTING

During the Spring of 2004, SPFPA conducted an organizing campaign to represent the security officers at the Hoover facility and other Department of Commerce locations. SPFPA, subsequently, petitioned the NLRB in Case 5-RC-15659 to represent the security officers located at the following sites: Washington Plaza I and II located in Upper Marlboro, MD; Silver Hill Plaza, Suitland MD; and, Bowie Computer Center, Bowie, MD. SPFPA won that election and was certified as the bargaining representative for the unit at those sites on March 31, 2004.

Despite SPFPA's contention that it had obtained sufficient cards in March 2004 for the security officers at the Hoover facility, that location was not included in the Board election in Case 5-RC-15659, as it was determined that the SPFPA was precluded under Section 9(c)(3) of the Act from seeking to represent those employees. Specifically, SPFPA was precluded from seeking to represent the Hoover building security officers because a prior Board election in Case 5-RC-15640 was conducted on December 5, 2003, less than twelve months prior to the election in 5-RC-15659, involving different unions seeking to represent the same unit at that location. Neither union in that prior case obtained a majority of the vote.

Although specifically excluded from Case 5-RC-15659, it is clear from a March 9, 2004 letter from the Employer to SPFPA that those parties contemplated including the Hoover building in future negotiations for a collective-bargaining agreement covering all of the Department of Commerce sites.[6] However, as of the date of that letter, there is no evidence in the record that cards were either presented to the Employer or that the Employer recognized SPFPA based on a card check or any other means demonstrating a showing of majority support of the unit employees at the Hoover building.

Prior to the July negotiation referenced above, NASPSO began its own organizing campaign for the unit at the Hoover building, collecting cards from security officers in June and July 2004. On July 22, 2004, the Employer sent a letter to SPFPA summarizing an agreement those parties had reached that day to meet and negotiate a collective-bargaining agreement for all of the Department of Commerce locations, including the Hoover building, by no later than December 15, 2004. The Employer attached a proposed collective-bargaining agreement to that letter. Despite that agreement, to date there is still no evidence in the record that cards were presented to the Employer or that the Employer recognized SPFPA based on any other means demonstrating a showing of majority support among unit employees at the Hoover building.

[6] That letter also mentions that at the July 2004 negotiation, Don Norwood, an SPFPA representative, would present cards for an unspecified Department of Commerce site. Even assuming those cards were intended to demonstrate a showing of interest among the security officers at the Hoover building, there is no evidence that those cards were ever produced.

On August 16, 2004, NASPSO sent a letter to the Employer asserting that it had obtained "an adequate number of signed authorization cards" from the unit employees at the Hoover building and that it was therefore requesting voluntary recognition. The Employer denied that request on September 6, 2004. The Employer and SPFPA failed to introduce evidence or testimony that the decision not to recognize NASPSO was based on a prior showing of majority support among unit employees for SPFPA.

SPFPA and the Employer negotiated and signed a collective-bargaining agreement on November 4, 2004. That agreement has not yet been ratified by the membership. Despite the negotiations between SPFPA and the Employer and the subsequent signing of a collective-bargaining agreement, there is no record evidence that SPFPA demonstrated to the Employer a showing of majority support for SPFPA among unit employees at the Hoover building.

ANALYSIS

Deciding the sole issue in this matter, whether or not the petitions should be barred based on the Employer's voluntary recognition of SPFPA, requires application of the Board's longstanding policy on this issue.[7] In Sound Contractors, 162 NLRB 364 (1966), the landmark voluntary recognition case in the representation case setting, the Board adopted its finding in Keller Plastics Eastern, Inc., 157 NLRB 583 (1966), and concluded that a bar will be found and afforded for a reasonable period of time where an employer extends recognition to a union "in good faith on the basis of a previously demonstrated showing of majority [support]." The Board's holding in those two cases essentially sets out a two-step analysis in determining the validity of a claim of voluntary recognition bar: (1) has there been a "demonstrated showing" by a majority of unit employees; and (2) has the employer extended recognition to the union claiming support of a majority of unit employees.

The Employer argues that a voluntary recognition bar should be found because it has implicitly extended its recognition of SPFPA as the bargaining representative of the Unit. In support of its contention that it implicitly recognized SPFPA, the Employer relies on the following conduct and evidence: (1) SPFPA collected a majority of authorization cards from Unit employees at the Hoover building in March 2004; (2) a March 9, 2004 letter from the Employer to SPFPA referencing negotiations for a collective-bargaining agreement covering the Department of Commerce locations, including the Hoover building, to be held in July 2004; (3) a July 22, 2004 letter from the Employer to SPFPA referencing a discussion between the parties and setting forth a schedule for reaching agreement on terms and conditions of a collective-bargaining agreement to be ratified by December 15, 2004; and, (4) a collective-bargaining agreement signed on November 4, 2004 by the SPFPA and the Employer.

[7] Although the Board granted the petitioner's request for review in the consolidated Dana Corp., 341 NLRB No. 150 (2004), and is reviewing briefs from the parties as well as amicus curae briefs from interested parties to address the Board's voluntary recognition bar doctrine, until and unless the Board issues a precedent-changing decision, I am still guided by the long-established precedent discussed below.

There is no doubt that the Board and courts concur that an employer's manifestation of voluntary recognition of a union may be implicit or explicit. The Employer cites to several cases in support of that proposition. To that extent, I agree with the Employer and find, that in the instant matter, it did implicitly extend recognition to SPFPA on July 22, 2004 when it sent a letter summarizing the parties' commitment to negotiate a collective-bargaining agreement covering the unit, to be ratified by December 15, 2004.

I disagree, however, that the Employer's extension of that recognition on July 22, 2004, gives cause to afford bar status because the record is devoid of any evidence establishing that a majority showing was ever actually demonstrated to the Employer.[8] The Board has long held that without a "clear and positive demonstration" of majority status, an employer's extension of recognition to a union is invalid, and does not bar a petition. Jack L. Williams, 231 NLRB 845 (1977); see Rollins Transportation System, Inc., 296 NLRB 793 (1989), as modified by Smith's Food and Drug Centers, Inc., 320 NLRB 844 (1996).[9]

The Employer cites to Vincent M. Ippolito, Inc., 313 NLRB 715 (1994), for the proposition that an employer's concession of majority status is sufficient, even where a union does not conduct a card check. The Employer notes that in that case, the Board found that where the employer conceded that a union represents a majority of its employees, without conducting a card check, and thereafter makes a commitment to bargain, a unilateral withdrawal from further bargaining violates Section 8(a)(5) of the Act. However, the Board also found in that case that the respondent interrogated its employee about employees support for the union to the extent that it left "no doubt… that the Union represented a majority of its employees." Id., at 721.[10]

Based on the facts of this case, I find that the Employer and SPFPA have failed to establish that the Employer recognized SPFPA based on a demonstrated majority support

[8] The Employer also points to testimony of NASPSO witness Caleb A. Gray-Burriss that during his tenure as executive director of SPFPA he collected the cards sometime in about March 2004 for the unit at the Hoover building. The Employer also notes that the hearing officer acknowledged that the Board has 30 SPFPA authorization cards in its possession. Even assuming a majority of cards have been collected for the unit at the Hoover building, there is no record evidence that those cards were presented to the Employer at any time. Therefore those cards are insufficient evidence of a nexus between any previously demonstrated showing of interest and the subsequent recognition by the Employer.

9 As there are two petitioning unions in this matter, it should also be noted that there is an exception to recognition bar when two rival unions are conducting organizing campaigns for the same group of employees. The Board will find that an employer's recognition of one union that demonstrates majority status will not bar processing a petition for an election filed by a rival union, where the rival union demonstrates a 30 percent showing of interest that predates the employer's recognition. Smith's Food and Drug Centers, Inc. In the instant matter, I need not even address this issue as SPFPA failed to present evidence that it demonstrated majority support to the Employer at any time.

[10] As even further evidence of majority support for the union in that case, the Board noted that prior to recognition, a union representative fanned a deck of authorization cards in front of the employer. Id.

of employees in the unit. Accordingly, I am directing an election in the unit stipulated to by the parties.

CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accord with the discussion above, I find and conclude as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.

2. As stipulated by the parties, the Employer is an employer as defined in Section 2(2) of the Act and is engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.

3. The Petitioner, National Association of Special Police and Security Officers (NASPSO) is a labor organization as defined in Section 2(5) of the Act, and claims certain employees of the Employer.

4. The Petitioner, Security Police and Fire Professionals of America (SPFPA) is a labor organization as defined in Section 2(5) of the Act, and claims certain employees of the Employer.

5. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9 (c)(1) and Section 2(6) and (7) of the Act.

6. The parties stipulated that the Employer, Coastal International Security, Inc. a South Carolina corporation, is engaged in the business of providing security guard services to the United States government. During the past twelve months, a representative period, the Employer, in conducting its business operations derived gross revenues in excess of $50,000 from the United States government, and that Employer is engaged in commerce within the meaning of the Act.

7. The Parties stipulated and I find the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time security officers employed by the Employer at the United States Department of Commerce building located at 1401 Constitution Avenue, NW, Washington, DC; but excluding all security officers at other locations, corporate officers, directors, lieutenants, sergeants, project managers, non-guard employees, office

clerical employees, professional employees, managerial employees, and supervisors as defined by the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by **NATIONAL ASSOCIATION OF SPECIAL POLICE AND SECURITY OFFICERS (NASPSO)** or by **SECURITY POLICE AND FIRE PROFESSIONALS OF AMERICA (SPFPA),** or by **NEITHER**. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be

clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, National Labor Relations Board, Region 5, 103 South Gay Street, Baltimore, MD 21202, on or before **DECEMBER 22, 2004**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (410) 962-2198. Since the list will be made available to all parties to the election, please furnish a total of two copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EDT on **DECEMBER 29, 2004**. The request may not be filed by facsimile.

(SEAL) /s/WAYNE R. GOLD

Dated: **DECEMBER 15, 2004**

Wayne R. Gold, Regional Director
National Labor Relations Board
Region 5